

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

DEVERICK SCOTT
ADC #131042

PLAINTIFF

V.

NO: 2:13CV00031 BSM/HDY

ARKANSAS DEPARTMENT
OF CORRECTION *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to Chief United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff Deverick Scott, currently incarcerated at the Varner Unit of the Arkansas Department of Correction, filed a *pro se* complaint on March 6, 2013. Pursuant to an order entered by Judge Miller (docket entry #8), Plaintiff was allowed to proceed only on claims that Defendant Don Ball and others denied him adequate medical care at the ADC’s East Arkansas Regional Unit and Varner Unit.

Plaintiff’s claims against all Defendants other than Ball have been dismissed. Ball has never been served with the summons and complaint, despite attempts to do so in the care of counsel for the prison medical provider (docket entry #18), and at Ball’s last known address (docket entry #42). On January 29, 2014, Plaintiff was ordered to provide an address at which Ball could be served, and was warned that his failure to do so within 30 days would result in the recommended dismissal of his claims against Ball (docket entry #84). More than 30 days have passed, and Plaintiff has not provided an address for Ball. Accordingly, Plaintiff’s claims against Ball should be dismissed. *See Lee v. Armontrout*, 991 F.2d 487, 489 (8th Cir. 1993) (per curiam) (plaintiffs proceeding *in forma*

pauperis are responsible for providing defendants' addresses), *cert. denied*, 510 U.S. 875 (1993); FED.R.CIV.P. 4(m) (providing for the without prejudice dismissal of action as to individual Defendant if service not made within 120 days of filing of complaint). Because all of Plaintiff's claims against all other Defendants have been dismissed previously, this complaint should be dismissed in its entirety.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's claims against Defendant Don Ball be DISMISSED WITHOUT PREJUDICE, and Ball's name be removed as a party Defendant.
2. Plaintiff's complaint be DISMISSED.
3. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE with respect to his claims against Ball, and DISMISSED WITH PREJUDICE in all other respects.
4. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 6 day of March, 2014.



UNITED STATES MAGISTRATE JUDGE